

December 1, 2000

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98

Dear Ms. Salas:

On November 16, 2000, Brad Stillman, Chuck Goldfarb, Don Grieco, and I represented WorldCom in a meeting with members of the Common Carrier Bureau to discuss WorldCom's pending Petition for Waiver of certain requirements in the Commission's Supplemental Order Clarification in CC Docket No. 96-98.¹ Representatives of Verizon also participated in the meeting. During the course of the meeting, Bureau staff requested that WorldCom provide additional information on the extent to which the Commission has previously distinguished among local exchange service, switched access service, and dedicated access service. By this letter, WorldCom responds to that request and shows that, while the Commission has taken actions that distinguish dedicated access service from switched access service, prior to the Supplemental Order Clarification it had consistently viewed local exchange service and switched access service as so inherently intertwined from both a demand-side and a supply-side perspective that, in effect, switched access service is a by-product of local exchange service.

In the NYNEX-Bell Atlantic merger order,² the Commission followed the analytical approach first

¹ Rel. June 2, 2000.

² *In the Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries*, File No. NSD-L-96-10, Memorandum Report and Order, released August 14, 1997, at ¶¶ 50-51.

first enunciated in some detail in its 1997 LEC In-Region Interexchange Order:³

In the *LEC In-Region Interexchange Order*, we further observed that for purposes of analysis we could aggregate separate product markets for which customers faced the same competitive alternatives. For the reasons described below and for purposes of this proceeding, we define the following three relevant product markets: (1) local exchange and exchange access service; (2) long distance service; and (3) local exchange and exchange access service bundled with long distance service.

... We will treat local exchange and exchange access services as a relevant product market separate from interstate, interexchange, long distance service, because while each point to point local calling route constitutes a separate market, the fact that each customer faces the same competitive alternatives for each route allows us to aggregate these routes into a service called local exchange and exchange access service.

History, common sense, and Commission precedent all demonstrate that the local exchange and exchange access market consists of three primary service categories -- local exchange service, switched access, and dedicated access -- and that switched access services are in fact little more than a by-product of local exchange service. When a carrier provides local exchange service to an end-user customer, part and parcel of that service is provision to that customer of the ability to make and receive long distance calls, which requires the provision of both originating and terminating switched access.⁴

In a series of orders in the first half of the 1990's, the Commission adopted and implemented a policy of expanded interconnection to promote competition in dedicated access and switched transport services.⁵ By mandating expanded interconnection and collocation, the Commission set the stage for the rise of competition for dedicated access services. But the Commission also recognized that expanded interconnection would do nothing to promote competition for non-transport components of switched access.

³ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report & Order, CC Dkt. 96-61, FCC 97-142, 1197 WL 193831 (rel. April 18, 1997), at ¶¶ 16-51, especially ¶ 113.

⁴ Indeed, the Commission has viewed access to interexchange service as so fundamental to the provision of basic voice service as to include it in the list of services designated for federal universal service support. 47 C.F.R. § 54.101(a)(7).

⁵ Switched transport services comprise transport services used by interexchange carriers in conjunction with switched access services.

The Commission's recognition of the irrelevance of expanded interconnection to competition for switched access services is illustrated by the limited pricing flexibility that the Commission allowed the incumbent LECs at that time. Under the regime established by the expanded interconnection orders, LECs were permitted to establish density zone pricing of special access and switched transport services when at least one interconnector in a given study area had taken the relevant cross-connect element. No matter how many cross-connects the incumbent LECs provisioned, however, they were not permitted to establish density zone pricing for non-transport switched access services. Thus, the Commission implicitly acknowledged a distinction between switched and dedicated access. Increased competition for one did not warrant relaxation of regulation of the other.

The Commission has stated, "[t]he 1996 Act opened the local exchange market and, hence, the market for switched access services, to competition."⁶ In so stating, the Commission plainly recognized that switched access is both distinct from dedicated access, which the Commission had already opened to competition, and inextricably tied to the provision of local exchange service. Indeed, in implementing the local competition provisions of the 1996 Act, the Commission clearly noted that the provision of switched access is a by-product of the provision of local exchange service.⁷

The Commission's approach to access charge reform further demonstrates the extent to which the Commission has treated the provision of switched access as part and parcel of local exchange service. In 1997, the Commission adopted a "market-based" approach to access charge reform. The Commission reasoned that "emerging competition in local telecommunications markets, spurred by the adoption of the 1996 Act," would help to identify any implicit subsidies in incumbent LEC interstate access charges.⁸ The Commission further observed that

[a]s competitive entry becomes increasingly possible, IXC's that now purchase interstate switched access services from incumbent LECs will be able to bypass those services where the prices (interstate access charges) do not reflect the economic costs of the underlying services. Those IXCs can do this by entering the local markets themselves as local exchange service providers, thereby self-

⁶ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order (rel. August 27, 1999) (*Pricing Flexibility Order*), ¶ 111.

⁷ *Local Competition Order*, 11 FCC Rcd at 15679, ¶ 357 ("[I]f there is a single loop dedicated to the premises of a particular customer and that customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services.")

⁸ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order (rel. May 16, 1997), ¶ 7.

providing interstate access services for their new local exchange customers.⁹

Thus, the Commission again plainly recognized that the provision of switched access service was a by-product of local exchange service.

The Commission's bifurcated approach to incumbent LEC pricing flexibility also evinces recognition of the distinct niches occupied by switched and dedicated access. Under the Commission's rules, incumbent LECs may obtain dedicated access pricing flexibility upon a showing of collocation-related triggers.¹⁰ But the Commission explicitly rejected a trigger based solely on collocation for switched access pricing flexibility. Instead, the Commission required a completely different showing which recognized the link between local exchange and switched access service.¹¹ By adopting separate triggers, the Commission implicitly acknowledged that switched and dedicated access occupy distinct niches within the local exchange and exchange access market.

As shown above, any conclusion that local exchange and exchange access service do not comprise a single product market would be wholly inconsistent with the merger orders and Commission precedent. The Commission's rules on expanded interconnection, local competition, access charge reform, and incumbent LEC pricing flexibility persuasively demonstrate that the Commission has never treated switched access service as other than a by-product of local exchange service.

Sincerely yours,



Henry G. Hultquist

cc: Dorothy Attwood
Glenn Reynolds
Michelle Carey
Jodie Donovan-May
Tom Navin
Richard Lerner

⁹ *Id.*, ¶ 265.

¹⁰ *Pricing Flexibility Order*, starting at ¶ 81.

¹¹ *Id.*, ¶ 110.